

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY P. McNEIL-NADEAU and DEPARTMENT OF HEALTH & HUMAN
SERVICES, SOCIAL SECURITY ADMINISTRATION, Lawrence, MA

*Docket No. 00-1240; Submitted on the Record;
Issued April 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On April 12, 1999 appellant, then a 46-year-old claims representative, filed a traumatic injury claim (Form CA-1) alleging that on March 17, 1999 she experienced stress and mental anguish when she was assaulted outside the employing establishment while on her way back from lunch with other employees. Appellant's claim was accompanied by factual and medical evidence.

By letter dated May 3, 1999, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office also advised appellant to submit additional factual and medical evidence supportive of her claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

By decision dated June 8, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty.

On October 8, 1999 the Office made a teleconference call to appellant to obtain further information on the assault, specifically, the reason for the assault. In a memorandum of the same date regarding the teleconference call, the Office indicated that appellant stated she was assaulted by Rococo Difriescio, the husband of appellant's coworker, Cheryl Difriescio, because Mrs. Difriescio told her husband that she reported her to the assistant manager about a personal

telephone call. Appellant also stated that Mr. Difriescio came to the employing establishment and assaulted her.

On July 20, 1999 the Office received appellant's undated letter requesting reconsideration of the Office's decision accompanied by factual evidence.

In response to the Office's May 3, 1999 letter, the employing establishment submitted factual and medical evidence.

In an October 26, 1999 decision, the Office modified the June 8, 1999 decision, to find that appellant had established that she was in the performance of duty at the time of the assault by Mr. Difriescio on March 17, 1999. The Office, however, found the medical evidence of record insufficient to establish that appellant sustained an emotional condition due to the March 17, 1999 employment incident.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

In this case, the Office has accepted as compensable the assault on appellant by Mr. Difriescio on March 17, 1999. Appellant has submitted no medical evidence, however, which establishes that her emotional condition resulted from the employment incident of March 17, 1999. To establish her claim for an emotional condition, appellant must submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

that such disorder is causally related to the identified compensable employment factor, the March 17, 1999 assault.⁴

In support of her claim, appellant submitted an April 8, 1999 medical report of Dr. Elizabeth Case, a licensed psychologist. Dr. Case noted that she had been treating appellant since August 1998 for anxiety and depression following her mother's illness and subsequent death. Dr. Case also noted that appellant was recently assaulted at work by a coworkers' husband and stated that as a result appellant suffered from symptoms of acute stress disorder, which hopefully would not continue into chronic post-traumatic stress disorder. Appellant also submitted Dr. Case's April 12, 1999 medical report revealing that she could not return to work at that time. She stated that appellant's post-traumatic symptoms following the assault on March 17, 1999 at the employing establishment had increased, that her anxiety had become more severe and that concentration was difficult. Dr. Case failed to provide any medical rationale explaining how or why the March 17, 1999 employment incident caused appellant's emotional condition. Therefore, her reports are insufficient to establish appellant's burden.

Appellant submitted a May 28, 1999 medical report of Dr. Tanya Korkosz, a psychiatrist, revealing her symptoms and several diagnoses, which included recurrent moderate major depression, generalized anxiety disorder and panic disorder without agoraphobia. Regarding the effect of appellant's medical treatment, Dr. Korkosz stated that appellant's depression and anxiety had been fluctuating up and down since August 1998 and that appellant had not responded well to medication management. She opined that the cause of appellant's conditions was "life circumstances." Dr. Korkosz also opined that "[i]t is not clear if any workplace incident contributed to her condition." Dr. Korkosz's report does not establish appellant's burden inasmuch as she did not attribute appellant's emotional conditions to the March 17, 1999 employment incident.

Inasmuch as there is no probative, rationalized medical evidence addressing and explaining why her emotional condition was caused by the March 17, 1999 employment incident, appellant has not met her burden of proof in establishing that she sustained an emotional condition caused by the accepted employment incident.

⁴ See William P. George, 43 ECAB 1159 (1992).

The October 26 and June 8, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 25, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member